

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Case No. 3:17-CR-254 (GTS)

v.

ALONZO HARRIS,

GOVERNMENT’S SENTENCING
MEMORANDUM

Defendant.

The United States of America, by and through its counsel of record, the United States Attorney for the Northern District of New York, hereby files its sentencing memorandum requesting that the Court impose a sentence within the defendant’s resulting Guidelines range.

The prescribed Guidelines sentence in this case, of lifetime imprisonment, is unquestionably severe. But the defendant’s conduct in this case, and his history of violent, criminal conduct, justify a severe sentence.

I

INTRODUCTION

On October 4, 2018, the defendant was found guilty following a jury trial of a Conspiracy to Distribute a Controlled Substance in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(A) and 846 (Count 1), and a Conspiracy to Commit Money Laundering in violation of 18 U.S.C. §§ 1956(a)(1)(A)(i) and 1956(h) (Count 2). The defendant is scheduled to be sentenced on April 23, 2019, in Syracuse, New York.

II

APPLICABLE STATUTORY AND GUIDELINES PROVISIONS

1) Statutory Sentencing Provisions

The government agrees with the recitation of the statutory maximum and minimum terms of incarceration, supervised release, and fines set forth in the PSR.

2) Factual Description

The government agrees with the recitation of the relevant factual information regarding the defendant's conduct as set forth in the PSR. In addition, the trial in this case exposed aspects of the defendant's extensive criminal conduct that are relevant to sentencing. Those facts are addressed below in more detail.

3) Guidelines Provisions

a. Base Offense Level and Special Offense Characteristics

The government agrees with the Probation Office's calculation of the defendant's Offense Level under the Sentencing Guidelines.

As an initial matter, the PSR correctly determines that the offense involved more than 4.5 kilograms of actual methamphetamine, resulting in an offense level of 38 pursuant to U.S.S.G. §2D1.1(c)(1). At trial, Akuan Johnson, Jolene Barrett, and Charles Green all testified that they received numerous multi-pound packages of methamphetamine from the defendant over the course of more than a year. The trial evidence also included testimony from multiple agents about the defendant's confession on the day of his arrest, where he admitted to sending approximately 50 packages of methamphetamine to New York. Postal Inspector McAlhaney testified about Government Exhibit 49, a spreadsheet he prepared of certain packages sent from Arizona to addresses that Barrett and Green testified were used to receive the packages from the defendant.

(Barrett and Green both testified that the only packages they received during this time period from Arizona were the defendant's methamphetamine packages.) Government Exhibit 49 includes approximately 50 packages, and is *under*-inclusive insofar as it does not include, for example, all of the methamphetamine packages shipped to Akuan Johnson.

The trial evidence also included three packages of methamphetamine that were sent by Harris to the greater Binghamton area and that were intercepted by law enforcement. As proven at trial, Government Exhibit 32 consisted of 698.8 grams of 99% pure methamphetamine; Government Exhibit 33 consisted of 223.7 grams of 100% pure methamphetamine; and Government Exhibit 35 consisted of 443.7 of 100% pure methamphetamine. In other words, just these three seized packages contained almost 1.5 kilograms of roughly 100% pure methamphetamine. And, as set forth in summary above and as the evidence at trial established, the seized drugs were a small fraction of the more than fifty packages involved in the conspiracy. Accordingly, the conspiracy involved well over 4.5 kilograms of methamphetamine. Indeed, because there was testimony that the seized packages of drugs were on the smaller side of what the defendant typically sent (between one and three pounds), just the 50 packages identified in Government Exhibit 49 could readily be assumed to correspond to *25 kilograms* of methamphetamine.

Similarly, the evidence clearly established that the methamphetamine came from Mexico, justifying the two-level increase pursuant to U.S.S.G. § 2D1.1(b)(5) as set forth in the PSR. During his confession on the day of his arrest, Harris admitted that the methamphetamine was supplied by the Mexicans with whom he was dealing.

The two level increase pursuant to U.S.S.G. § 2S1.1(b)(2)(B) for convictions for money laundering also is appropriate based on Harris's conviction for Count Two of the Indictment.

Finally, the PSR also correctly includes a four-level enhancement pursuant to U.S.S.G. § 3B1.1(a), insofar as the evidence at trial established that the defendant was an organizer or leader of criminal activity involving five or more participants or which was otherwise extensive. Green and Johnson testified that the defendant determined when drug packages would ship and would provide instructions on when to expect them. Green also testified about the defendant's directions about sending drug proceeds back to him. This included, for example, a trip that the defendant took on August 10, 2017 to collect cash; a trip that was preceded by the intercepted telephone calls (introduced at trial) where the defendant directed Green to go to other members of the conspiracy to collect money so that it would be ready for the defendant to pick up. The defendant also affirmatively solicited members to the conspiracy. For example, Green testified that he had previously been obtaining methamphetamine from George Clarke, who was himself supplied by the defendant; but the defendant approached Green about selling directly for him. Similarly, Barrett testified that the defendant approached her about selling methamphetamine, rather than simply serving as a courier for packages, which also was the subject of some of the recorded telephone calls that were played during trial. Moreover, the defendant himself admitted during his confession on the day of his arrest that he directed a number of individuals to package the methamphetamine and to ship it on the defendant's behalf from Arizona. Accordingly, it is clear that the defendant played both a leadership and organizational role for the operation.

Similarly, the trial evidence established that the criminal activity involved *both* more than five participants *and* was otherwise extensive. (Section 3B1.1(a) is drafted in the disjunctive, such that the criminal activity is sufficient if it either involved five or more persons or was otherwise extensive. In this case, it was both.) The defendant personally organized and directed more than five participants in the criminal activity, including his co-defendants in this case, not to mention

the individuals in Arizona whom the defendant directed in the shipment of packages. Moreover, beyond simply the number of participants, the activity in this case was extensive, involving the distribution of numerous kilograms of methamphetamine over the course of more than one and a half years.

b. Criminal History Category

The government agrees with the Probation Office's determination of the defendant's criminal history category under the Guidelines.

c. Guidelines Range and Sentence

The government agrees with the Probation Office's determination of the Guidelines sentence in this case.

III

GOVERNMENT'S SENTENCING RECOMMENDATION

The Guidelines in this case counsel the most severe incarcerative sentence possible: life. The Second Circuit has cautioned that the "sheer magnitude of [a lifetime] sentence" should "give pause" in drug cases. *United States v. Ulbricht*, 858 F.3d 71, 130-32 (2d Cir. 2017). Nevertheless, the Second Circuit has also repeatedly affirmed such sentences, where the sentencing court made detailed findings about the aggravating factors associated with the crime and the defendant's related criminal conduct. *See, e.g., Ulbricht*, 858 F.3d at 129-34 (affirming life sentence for drug conspiracy conviction for defendant who operated "Silk Road" marketplace and had attempted to murder several individuals); *United States v. Nina*, 734 Fed. Appx. 27, 36-37 (2d Cir. 2018) (affirming life sentence for § 846 conviction for defendant who was a leader of a violent drug trafficking organization and had been personally involved in acts of violence, including a murder); *United States v. Snow*, 462 F.3d 55, 65 (2d Cir. 2006) (affirming life sentence for defendant who

was found, by preponderance of the evidence, to be responsible for 12.5 kilograms of cocaine base). The defendant's conduct in this case was egregious, in the sheer scale of the drugs distributed, and his role in the operation. Moreover, the defendant has a history of serious violence and weapons possession, and his criminal conduct has continued largely unabated over the course of his adult life. He thus deserves a severe sentence.

As described briefly above, and as established in detail during the trial, the defendant was the leader of a prolific methamphetamine trafficking operation, which distributed hundreds of pounds of methamphetamine from Mexico to New York's Southern Tier. Indeed, during the period of the conspiracy, given the volume of drugs that he was shipping, the defendant played a singular role in the proliferation of a drug (methamphetamine) that has had a devastating impact on the Southern Tier. In addition, the defendant also admitted on the day of his arrest that his Binghamton operation was only one part of his trafficking network. In particular, he acknowledged shipping large quantities of methamphetamine to individuals in Ohio and New Mexico. Although shipments other than into the Northern District of New York are not part of the conspiracy of which the defendant was convicted, the scale of his operation is relevant for the Court to consider in assessing Harris's dangerousness.

Moreover, the trial also established that the defendant used threats of violence to instill obedience among the members of the charged conspiracy. For example, on July 29, 2017, when a package intended for Jolene Barrett had not arrived, the defendant told Green "That girl can be killed this time. I don't give a fuck, man." (The call was introduced at the trial as Government Exhibit 1A.) Similarly, on August 23, 2017, after a methamphetamine package did not arrive, the defendant threatened Green in a text message (Gov. Exh. 1kk.7): "You better watch your back time is limited." In another call on August 22, 2017, when it appeared that another

methamphetamine package had not been delivered, the defendant told Barrett, “well I got some people out there. You find out who – who got that box. I’ll have my people go get them motherfuckers...” (Gov. Exh. 9I.) In another call on August 23, 2017, after a package intended for co-defendant Rachel Millard had not been delivered, the defendant told Barrett that “they sending people to Rachel’s house.” (Gov. Exh. 9bb.)

These were no idle threats, given the defendant’s history of acts of violence and weapons possession. At age 17, the defendant was convicted of felony assault and sentenced to a four-year prison term. (PSR ¶ 54) Shortly after his release on that charge, the defendant was convicted of drug charges based on an incident where, in addition to the drugs, he was found in possession of a loaded handgun magazine. (PSR ¶ 55.) A few years later, he was sentenced to eight years imprisonment to run concurrently on each of two felony convictions: one for trafficking stolen property and the other for felony aggravated assault. (PSR ¶¶ 58-59.) The felony assault conviction was for a fight where the defendant repeatedly stabbed his victim. (PSR ¶ 59.)

The defendant’s prior arrest history similarly reflects a pattern of violence. Significantly, the defendant was charged in 1996 with attempted first-degree murder. The prosecutor ultimately dismissed the charges,¹ although the reasons for the dismissal are unclear. As reflected in the PSR, an officer observed Harris at the scene with the gun, and numerous witnesses provided statements

¹ For purposes of sentencing, the Court can consider the facts giving rise to the prior charges, even if those charges resulted in an acquittal. See *United States v. Watts*, 519 U.S. 148, 154 (1997) (“We therefore hold that a jury’s verdict of acquittal does not prevent the sentencing court from considering conduct underlying the acquitted charge, so long as that conduct has been proved by a preponderance of the evidence.”); *United States v. Pica*, 692 F.3d 79, 88 (2d Cir. 2012) (same). The preponderance standard (for proving the facts of the acquitted charge) simply “mean[s] that [the facts] are more likely than not true.” *United States v. Rizzo*, 349 F.3d 94, 98 (2d Cir. 2003). The district court’s findings of fact in this regard are reviewed for clear error. *Id.*

to police identifying Harris as the shooter.² (PSR ¶ 62.) Moreover, the defendant's penchant for violence has not abated with age. According to police records, in 2015, the defendant struck his then girlfriend in the face with a closed fist. (PSR ¶ 66) In 2017, the defendant apparently struck his wheelchair-bound neighbor in the head multiple times in a dispute over car rims. (PSR ¶ 67) According to police reports, the victims in both instances identified the defendant as the assailant and officers were able to observe injuries on the victims that were consistent with the allegations. (PSR ¶¶ 66-67.) The charges were ultimately dismissed. Although the reason for the dismissals is unspecified in the PSR, domestic violence charges are notoriously difficult to prosecute because victims become intimidated and reluctant to cooperate in the prosecution.

Aggravating the defendant's violence is his repeated use of firearms in such conduct. For example, the conduct that led to one of his early drug convictions included the defendant's possession of a handgun magazine loaded with .380 ammunition. (PSR ¶ 55.) As referenced above, his attempted murder charges involved the discharge of a handgun. (PSR ¶ 62.) And the defendant continued to possess firearms as recently as his arrest on these charges. During the execution of the search warrant at his residence on September 20, 2017 (PSR ¶ 30), law enforcement located a box of ammunition and a loaded "banana" magazine for use with an AK-47 style rifle.

Finally, the defendant has failed to show any remorse, or accept responsibility for, his criminal conduct. The defendant repeatedly delayed proceedings in this case, by firing a number of lawyers and then making several patently false allegations of misconduct against his lawyers,

² The government has obtained the police reports from the attempted murder charge, which detail the witness statements implicating the defendant in the conduct. The government can provide those reports to the Court, Probation and the defendant under seal.

the Court and the government. His lack of contrition, combined with his extensive criminal history, indicate that the defendant has no real hope of reform and rehabilitation.

For the foregoing reasons, a sentence within the resulting Guidelines range is sufficient, but not greater than necessary to comply with the purposes set forth in 18 U.S.C. § 3553(a).³

Respectfully submitted this 1st day of April, 2019

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³ The government reserves the right to respond to defense arguments raised for the first time after the filing of this memorandum. Similarly, if the Court is considering a *sua sponte* departure from the applicable sentencing guidelines range on a ground not previously identified by the parties or in the Presentence Investigation Report, the parties are entitled to notice and an opportunity to respond. *See* Fed. R. Crim. P. 32(i)(1)(c), 32(h). Further, the United States respectfully requests that the Court provide the parties with any *ex parte* communications received by the Court in connection with sentencing, with the exception of the confidential sentencing recommendation submitted by the United States Probation Office.